

AMENDED IN SENATE MARCH 24, 1998

**SENATE BILL**

**No. 2194**

**Introduced by Senator Wright**

February 20, 1998

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An act to amend ~~Section~~ *Sections 1569.17 and 1569.725* of the Health and Safety Code, relating to community care.

LEGISLATIVE COUNSEL'S DIGEST

SB 2194, as amended, C. Wright. Residential care for the elderly: home health care: medical information.

Existing law provides for the licensure and regulation of residential care facilities for the elderly, administered by the State Department of Social Services.

Existing law also provides for the licensure and regulation of home health agencies.

*Existing law authorizes the State Department of Social Services to prohibit a residential care facility for the elderly licensee from employing, or continuing the employment of, or allowing the engagement in other specified acts by, an employee or prospective employee who has committed or engaged in certain prohibited acts, including those persons providing assistance in dressing, grooming, bathing, or personal hygiene.*

*Existing law requires home health aides and nurse assistants to submit fingerprint cards to the State Department of Health Services in order to obtain criminal records clearances.*

*This bill would provide that any nurse assistant or home health aide meeting the criminal record clearance requirements for employment in facilities licensed by the*

*State Department of Health Services would be deemed to meet these existing residential care facility for the elderly employment requirements.*

Existing law authorizes a residential care facility for the elderly to provide incidental medical care through a home health agency, as defined, when certain conditions are met.

Existing law, the Confidentiality of Medical Information Act, provides procedures governing the acquisition and use of an authorization for the disclosure of medical information by a health care provider.

This bill would specify that the Confidentiality of Medical Information Act applies to the sharing of resident information relative to the patient's condition and the care and treatment provided to the patient.

Since a violation of residential care for the elderly licensure provisions is a crime, the bill would, by creating a new crime, impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 1569.17 of the Health and Safety*  
2 *Code is amended to read:*  
3 1569.17. The Legislature recognizes the need to  
4 generate timely and accurate positive fingerprint  
5 identification of applicants as a condition of issuing  
6 licenses, permits, or certificates of approval for persons to  
7 operate or provide direct care services in a residential  
8 care facility for the elderly. The Legislature supports the  
9 use of the fingerprint live-scan technology, as identified  
10 in the long-range plan of the Department of Justice for  
11 fully automating the processing of fingerprints and other  
12 data by the year 1999. It is the intent of the Legislature in

1 enacting this section to require the fingerprints of those  
2 individuals whose contact with clients of residential care  
3 facilities for the elderly may pose a risk to the clients'  
4 health and safety.

5 (a) Before issuing a license to any person or persons to  
6 operate or manage a residential care facility for the  
7 elderly, the department shall secure from an appropriate  
8 law enforcement agency a criminal record to determine  
9 whether the applicant or any other person specified in  
10 subdivision (b) has ever been convicted of a crime other  
11 than a minor traffic violation or arrested for any crime  
12 specified in Section 290 of the Penal Code, for violating  
13 Section 245 or 273.5, subdivision (b) of Section 273a or,  
14 prior to January 1, 1994, paragraph (2) of Section 273a of  
15 the Penal Code, or for any crime for which the  
16 department cannot grant an exemption if the person was  
17 convicted and the person has been exonerated. That  
18 criminal history information shall include the full  
19 criminal record, if any, of those persons, and subsequent  
20 arrest information pursuant to Section 11105.2 of the  
21 Penal Code. The following shall apply to the criminal  
22 record information:

23 (1) If the State Department of Social Services finds  
24 that the applicant or any other person specified in  
25 subdivision (b) has been convicted of a crime, other than  
26 a minor traffic violation, the application shall be denied,  
27 unless the director grants an exemption pursuant to  
28 subdivision (f).

29 (2) If the State Department of Social Services finds  
30 that the applicant, or any person specified in subdivision  
31 (b) is awaiting trial for a crime other than a minor traffic  
32 violation, the State Department of Social Services shall  
33 cease processing the application until the conclusion of  
34 the trial.

35 (3) If no criminal record information has been  
36 recorded, the Department of Justice shall provide the  
37 applicant and the State Department of Social Services  
38 with a statement of that fact.

39 (4) If the State Department of Social Services finds  
40 after licensure that the licensee, or any other person

1 specified in paragraph (2) of subdivision (b), has been  
2 convicted of a crime other than a minor traffic violation,  
3 the license may be revoked, unless the director grants an  
4 exemption pursuant to subdivision (f).

5 (b) In addition to the applicant, the provisions of this  
6 section shall be applicable to criminal convictions of the  
7 following persons:

8 (1) Adults responsible for administration or direct  
9 supervision of staff.

10 (2) Any person, other than a client, residing in the  
11 facility.

12 (3) Any person who provides client assistance in  
13 dressing, grooming, bathing, or personal hygiene. *Any*  
14 *nurse assistant or home health aide meeting the*  
15 *requirements of Section 1338.5 or 1736.6, respectively,*  
16 *shall be deemed to meet the requirements of this section.*

17 (4) Any staff person or employee who has frequent  
18 and routine contact with the clients. In determining who  
19 has frequent contact, any volunteer who is in the facility  
20 shall be exempt unless the volunteer is used to replace or  
21 supplement staff in providing direct care and supervision  
22 of clients. In determining who has routine contact, staff  
23 and employees under direct onsite supervision and who  
24 are not providing direct care and supervision or who have  
25 only occasional or intermittent contact with clients shall  
26 be exempt.

27 (5) If the applicant is a firm, partnership, association,  
28 or corporation, the chief executive officer or other person  
29 serving in like capacity.

30 (6) Additional officers of the governing body of the  
31 applicant, or other persons with a financial interest in the  
32 applicant, as determined necessary by the department by  
33 regulation. The criteria used in the development of these  
34 regulations shall be based on the person's capability to  
35 exercise substantial influence over the operation of the  
36 facility.

37 (c) (1) Subsequent to initial licensure, any person  
38 specified in subdivision (b) and not exempted from  
39 fingerprinting shall, as a condition to employment,  
40 residence, or presence in a residential facility for the

1 elderly, be fingerprinted and sign a declaration under  
2 penalty of perjury regarding any prior criminal  
3 convictions. The licensee shall submit these fingerprints  
4 to the Department of Justice not later than 20 calendar  
5 days following employment, residence, or initial  
6 presence in the residential care facility for the elderly.

7 (2) These fingerprints shall be on a card provided by  
8 the State Department of Social Services for the purpose  
9 of obtaining a permanent set of fingerprints. Fingerprints  
10 not submitted to the Department of Justice, as required  
11 in this section, shall result in the citation of a deficiency  
12 and the fingerprints shall then be submitted to the State  
13 Department of Social Services for processing.

14 (3) Within 30 calendar days of the receipt of the  
15 fingerprints, the Department of Justice shall notify the  
16 State Department of Social Services of the criminal  
17 record information, as provided for in this subdivision. If  
18 no criminal record information has been recorded, the  
19 Department of Justice shall provide the licensee and the  
20 State Department of Social Services with a statement of  
21 that fact within 15 calendar days of receipt of the  
22 fingerprints. If new fingerprints are required for  
23 processing, the Department of Justice shall, within 15  
24 calendar days from the date of receipt of the fingerprints,  
25 notify the licensee that the fingerprints were illegible.

26 (4) Except for persons specified in paragraph (2) of  
27 subdivision (b), the licensee shall endeavor to ascertain  
28 the previous employment history of persons required to  
29 be fingerprinted under this subdivision. If it is  
30 determined by the State Department of Social Services,  
31 on the basis of the fingerprints submitted to the  
32 Department of Justice, that the person has been  
33 convicted of a sex offense against a minor, an offense  
34 specified in Section 243.4, 273a, or 273d, subdivision (a) or  
35 (b) of Section 368 of the Penal Code, or a felony, the State  
36 Department of Social Services shall notify the licensee in  
37 writing within 15 calendar days of the receipt of the  
38 notification from the Department of Justice to act  
39 immediately to terminate the person's employment,  
40 remove the person from the residential care facility for

1 the elderly, or bar the person from entering the  
2 residential care facility for the elderly. The State  
3 Department of Social Services may subsequently grant an  
4 exemption pursuant to subdivision (f). If the conviction  
5 was for another crime, except a minor traffic violation,  
6 the licensee shall, upon notification by the State  
7 Department of Social Services, act immediately to either  
8 (1) terminate the person's employment, remove the  
9 person from the residential care facility for the elderly, or  
10 bar the person from entering the residential care facility  
11 for the elderly; or (2) seek an exemption pursuant to  
12 subdivision (f). The department shall determine if the  
13 person shall be allowed to remain in the facility until a  
14 decision on the exemption is rendered by the  
15 department. A licensee's failure to comply with the  
16 department's prohibition of employment, contact with  
17 clients, or presence in the facility as required by this  
18 paragraph shall be grounds for disciplining the licensee  
19 pursuant to Section 1569.50.

20 (5) The department may issue an exemption on its  
21 own motion pursuant to subdivision (f) if the person's  
22 criminal history indicates that the person is of good  
23 character based on the age, seriousness, and frequency of  
24 the conviction or convictions. The department, in  
25 consultation with interested parties, shall develop  
26 regulations to establish the criteria to grant an exemption  
27 pursuant to this paragraph.

28 (6) Concurrently with notifying the licensee pursuant  
29 to paragraph (4), the department shall notify the affected  
30 individual of his or her right to seek an exemption  
31 pursuant to subdivision (f). The individual may seek an  
32 exemption only if the licensee terminates the person's  
33 employment or removes the person from the facility after  
34 receiving notice from the department pursuant to  
35 paragraph (4).

36 (d) For purposes of this section or any other provision  
37 of this chapter, a conviction means a plea or verdict of  
38 guilty or a conviction following a plea of nolo contendere.  
39 Any action that the department is permitted to take  
40 following the establishment of a conviction may be taken

1 when the time for appeal has elapsed, or the judgment of  
2 conviction has been affirmed on appeal or when an order  
3 granting probation is made suspending the imposition of  
4 the sentence, notwithstanding a subsequent order  
5 pursuant to the provisions of Sections 1203.4 and 1203.4a  
6 of the Penal Code permitting a person to withdraw his or  
7 her plea of guilty and to enter a plea of not guilty, or  
8 setting aside the verdict of guilty, or dismissing the  
9 accusation, information, or indictment. For purposes of  
10 this section or any other provision of this chapter, the  
11 record of a conviction, or a copy thereof certified by the  
12 clerk of the court or by a judge of the court in which the  
13 conviction occurred, shall be conclusive evidence of the  
14 conviction. For purposes of this section or any other  
15 provision of this chapter, the arrest disposition report  
16 certified by the Department of Justice or documents  
17 admissible in a criminal action pursuant to Section 969b  
18 of the Penal Code shall be prima facie evidence of the  
19 conviction, notwithstanding any other provision of law  
20 prohibiting the admission of these documents in a civil or  
21 administrative action.

22 (e) The State Department of Social Services shall not  
23 use a record of arrest to deny, revoke, or terminate any  
24 application, license, employment, or residence unless the  
25 department investigates the incident and secures  
26 evidence, whether or not related to the incident of arrest,  
27 that is admissible in an administrative hearing to establish  
28 conduct by the person that may pose a risk to the health  
29 and safety of any person who is or may become a client.  
30 The State Department of Social Services is authorized to  
31 obtain any arrest or conviction records or reports from  
32 any law enforcement agency as necessary to the  
33 performance of its duties to inspect, license, and  
34 investigate community care facilities and individuals  
35 associated with a community care facility.

36 (f) (1) After review of the record, the director may  
37 grant an exemption from disqualification for a license as  
38 specified in paragraphs (1) and (4) of subdivision (a), or  
39 for employment, residence, or presence in a residential  
40 care facility for the elderly as specified in paragraphs (4),

1 (5), and (6) of subdivision (c) if the director has  
2 substantial and convincing evidence to support a  
3 reasonable belief that the applicant and the person  
4 convicted of the crime, if other than the applicant, are of  
5 such good character as to justify issuance of the license or  
6 special permit or granting an exemption for purposes of  
7 subdivision (c). However, no exemption shall be granted  
8 pursuant to this subdivision if the conviction was for an  
9 offense specified in Section 220, 243.4, or 264.1,  
10 subdivision (a) of Section 273a or, prior to January 1, 1994,  
11 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
12 subdivision (a) of Section 290, or subdivision (a) or (b) of  
13 Section 368 of the Penal Code, or was a conviction of  
14 another crime against an individual specified in  
15 subdivision (c) of Section 667.5 of the Penal Code. The  
16 director shall notify in writing the licensee or the  
17 applicant of his or her decision within 60 days of receipt  
18 of all information from the applicant and other sources  
19 determined necessary by the director for the rendering  
20 of a decision pursuant to this subdivision.

21 (2) The department shall not prohibit a person from  
22 being employed or having contact with clients in a facility  
23 on the basis of a denied criminal record exemption  
24 request or arrest information unless the department  
25 complies with the requirements of Section 1569.58.

26 (g) (1) For purposes of compliance with this section,  
27 the department may permit an individual to transfer a  
28 current criminal records clearance, as defined in  
29 subdivision (a), from one facility to another, as long as the  
30 criminal record clearance has been processed through a  
31 state licensing district office, and is being transferred to  
32 another state licensing district office.

33 (2) The State Department of Social Services shall hold  
34 criminal records clearances in its active files for a  
35 minimum of two years after an employee is no longer  
36 employed at a licensed facility in order for the criminal  
37 records clearances to be transferred under this section.

38 (h) If a licensee or facility is required by law to deny  
39 employment or to terminate employment of any  
40 employee based on written notification from the state



1 department that the employee has a prior criminal  
2 conviction or is determined unsuitable for employment  
3 under Section 1569.58, the licensee or facility shall not  
4 incur civil liability or unemployment insurance liability as  
5 a result of that denial or termination.

6 (i) (1) In order to expedite the current criminal  
7 record clearance and fingerprint process of the  
8 Department of Justice, the Department of Justice shall  
9 complete work on all of its current backlog of criminal  
10 record clearances for residential care facilities for the  
11 elderly licensed by the State Department of Social  
12 Services by July 1, 1995.

13 (2) Effective January 1, 1995, the Department of  
14 Justice shall complete all new requests for criminal record  
15 clearances for residential care facilities for the elderly  
16 within 30 days of receipt.

17 (3) The Department of Justice shall coordinate with  
18 the State Department of Social Services to establish and  
19 implement an automated live-scan processing system for  
20 fingerprints in two district offices of the Community Care  
21 Licensing Division of the State Department of Social  
22 Services by July 1, 1995. These live-scan processing units  
23 shall be connected to the main system at the Department  
24 of Justice by July 1, 1996, and shall become part of that  
25 department's pilot project in accordance with its  
26 long-range plan. The State Department of Social Services  
27 may charge a fee not to exceed five dollars (\$5) or the  
28 actual cost of processing a set of live-scan fingerprints.

29 (4) The Department of Justice shall provide a report  
30 to the Assembly Human Services Committee and to the  
31 Senate Health and Human Services Committee by July  
32 15, 1995, regarding the completion of backlogged  
33 criminal record clearance requests pursuant to  
34 paragraph (1) and the progress on implementing the  
35 automated live-scan processing system in the two district  
36 offices pursuant to paragraph (3). The Department of  
37 Justice shall provide a report to the Assembly Human  
38 Services Committee and to the Senate Health and  
39 Human Services Committee by April 15, 1996, regarding  
40 the progress of the implementation of the statewide

1 CAL-CII system; the number of requests for criminal  
2 clearances received pursuant to this section during the  
3 previous year; the number of criminal record clearances  
4 requested and completed pursuant to this section within  
5 a 17-day “expedite” period or within the 30-day period  
6 required by paragraph (2); and the number of requests  
7 and reasons for delays beyond the 30-day period.

8 *SEC. 2.* Section 1569.725 of the Health and Safety  
9 Code is amended to read:

10 1569.725. (a) A residential care facility for the elderly  
11 may provide incidental medical care through a home  
12 health agency, licensed pursuant to Chapter 8  
13 (commencing with Section 1725), when all of the  
14 following conditions are met:

15 (1) The facility, in the judgment of the department,  
16 has the ability to provide the supporting care and  
17 supervision appropriate to meet the needs of the resident  
18 receiving care from a home health agency.

19 (2) The home health agency has been advised of the  
20 regulations pertaining to residential care facilities for the  
21 elderly and the requirements related to incidental  
22 medical care being provided in the facility.

23 (3) There is evidence of an agreed-upon protocol  
24 between the home health agency and the residential care  
25 facility for the elderly. The protocol shall address areas of  
26 responsibility of the home health agency and the facility  
27 and the need for communication and the sharing of  
28 resident information related to the home health care  
29 plan. The sharing of resident information relative to the  
30 patient’s condition and the care and treatment provided  
31 to the patient shall be governed by the Confidentiality of  
32 Medical Information Act, provided for pursuant to Part  
33 2.6 (commencing with Section 56) of Division 1 of the  
34 Civil Code.

35 (4) There is ongoing communication about the  
36 services provided by the home health agency and the  
37 frequency and duration of care to be provided.

38 (b) Nothing in this section is intended to expand the  
39 scope of care and supervision for a residential care facility  
40 for the elderly, as prescribed by this chapter.

1 (c) Nothing in this section shall require any care or  
2 supervision to be provided by the residential care facility  
3 for the elderly beyond that which is permitted in this  
4 chapter.

5 (d) The department shall not be responsible for the  
6 evaluation of medical services provided to the resident of  
7 the residential care facility for the elderly by the home  
8 health agency.

9 ~~SEC. 2.—~~

10 *SEC. 3.* No reimbursement is required by this act  
11 pursuant to Section 6 of Article XIII B of the California  
12 Constitution because the only costs that may be incurred  
13 by a local agency or school district will be incurred  
14 because this act creates a new crime or infraction,  
15 eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section  
17 17556 of the Government Code, or changes the definition  
18 of a crime within the meaning of Section 6 of Article  
19 XIII B of the California Constitution.

20 Notwithstanding Section 17580 of the Government  
21 Code, unless otherwise specified, the provisions of this act  
22 shall become operative on the same date that the act  
23 takes effect pursuant to the California Constitution.

